

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC

In the matter of:)	
)	
Amendment of Part 74 of the Commission's)	MB Docket No. 18-119
Rules Regarding FM Translator Interference)	

COMMENTS OF REC NETWORKS

I. INTRODUCTION

1. Founded in 1984, REC Networks (REC) is a leading advocacy voice for a citizen's access to spectrum through broadcast and other radio services. REC's constituency includes but is not limited to Low Power FM (LPFM), rural commercial and noncommercial broadcasting and non-broadcast services such as the Amateur Radio Service. In these *Comments*, REC will address the issues raised by the Commission in the *Notice of Proposed Rulemaking (NPRM)* in the above captioned proceeding released on May 10, 2018.

II. REC POSITION STATEMENTS

2. Over the past few years based on the experiences that have been witnessed by REC, we have developed several bullet points to summarize the issues that are currently being faced by services within the REC constituency.

- a) The interference that is being caused by new and modified translators to the LPFM service has grown significantly since the AM Revitalization filing windows (The "250-mile move" opportunity, Auction 99 and Auction 100).
- b) It has taken too long for LPFM complaints against translator interference to be taken seriously by the Media Bureau and Enforcement Bureau and in some cases had required a complaint by a full-service station in order to warrant serious action.
- c) There have been cases where translators are being constructed in a manner different than their construction permit, mainly where it comes to their directional antenna pattern.

Regulations already exist that require translator applicants to provide full proofs of performance; however, the Audio Division chooses not to enforce this regulation.

- d) LPFM stations filing complaints against translators have been met with hostility by the translator interest and LPFM listeners have been threatened with litigation for filing complaints.
- e) LPFM stations, being non-commercial stations that originate much of their own programming to a small area and restricted from multiple/corporate ownership are much less likely to have the resources to retain legal or engineering counsel.
- f) Many LPFM stations provide a distinct audio programming service that is not available through most full-service broadcast stations, including NCE stations therefore, LPFM listeners are more likely to be attempting to listen to the station from outside of the 60 dBu protected contour of the station and many LPFM stations have built loyal listeners who depend on their station for critical news and information.
- g) As LPFM stations are non-commercial and non-corporate, they may also lack the resources to provide an internet stream of their programming for listeners outside their 60 dBu service contour. Many LPFM stations, especially those in urban areas may be reaching an audience that does not have “at home” internet access or access to a smart phone and normally accesses the internet from a public place like a library.
- h) While contours may be effective for most cases of spacing and allocation, they are ineffective for demonstrating actual field strength at a listener location. Other methods, such as Longley/Rice have been proven to be more effective in determining coverage of lower-powered facilities.
- i) The disparity between the methods used for FM translators to protect LPFM stations and vice versa have caused a situation where an LPFM station can be “boxed in” and restricted from moving in various directions where the FM translator is much freer to move.
- j) The Commission is currently misinterpreting, but not necessarily violating the Local Community Radio Act in respect to how LPFM stations can protect FM translators and TV Channel 6 stations. REC believes a reinterpretation of the Act in this manner can alleviate many of the “short-spacing” issues and create new displacement opportunities.

- k) FM translators have more flexibility based on the distance the station can be moved on a minor change compared to the restrictions imposed on LPFM stations.

III. DISCUSSION OF PROPOSED RULE CHANGES

A. Channel changes

3. Under the current rules and policy, absent a “trigger event” from a primary service, FM translators are permitted to move to a first, second, or third adjacent channel as well as an intermediate channel within the same band (non-reserved vs. reserved) as a minor change.¹ In the NPRM, the Commission is proposing to permit FM translators change to any channel within the same band with some form of a showing of reduced inward or outward interference.

4. REC supports efforts that would bring FM translators on a level playing field with LPFM stations. Currently, LPFM stations are permitted to change to non-adjacent channels as a minor change upon a showing of reduced interference.² REC has completed many of these studies for LPFM clients and they are normally done as a result of “incoming” interference (where the other station is interfering with the LPFM station). These studies are normally conducted by looking at the LPFM station location in respect to the appropriate interfering contour of the other station. Reduced interference can be demonstrated in many cases by showing that the proposed channel would result in a weaker interfering contour at the LPFM tower site (e.g. on the current channel, the interfering station places a 45 dBu contour at the LPFM station’s tower where on the proposed channel, an interfering station places a 41 dBu contour at the LPFM station’s tower site). In some cases, the proposed channel may be partially or outside of all interfering contours. In some cases, however, we have found that even though a LPFM service contour is outside of an interfering station’s interfering contour, a Longley/Rice study will still demonstrate that a minimum interfering field strength (such as 40 dBu) can be received outside of the interfering contour. Since the calculation of HAAT does not take into consideration changes in elevation path between two points, it can’t take valleys and opposite foothills into proper consideration.

¹ - See 47 C.F.R. §74.1233.

² - See 47 C.F.R. §73.870(a).

5. In a survey of REC constituents that are licensed LPFM stations, three-quarters of the respondents support the ability for LPFM stations to be able to change channels upon a technical showing of reduced interference in a method similar to that outlined in §73.870(a) for LPFM stations.³

6. In an effort to bring FM translators to a level playing field with LPFM stations in the spirit of the “equal in status” clause of Section 5 of the LCRA, REC and its constituents support a process where FM translators should be permitted to change to non-adjacent channels upon a showing of reduced interference, inward or outward in a manner similar to that afforded to LPFM stations in §73.870(a).

7. *Band-hopping* – Under current LPFM rules, LPFM stations are permitted to “band-hop” (switch between a non-reserved and reserved band channel or vice versa). Because of the additional distance separation requirements imposed on LPFM stations by Section 3(a)(1) of the LCRA in respect to full-service stations, LPFM stations still need this flexibility to band-hop when necessary. For FM translators, REC takes no position on the ongoing prohibition of band-hopping as long as it does not jeopardize the current ability for LPFM stations to band-hop either as an adjacent channel change or upon a showing of reduced interference.

B. Minimum Number of Listener Complaints

8. Currently, the Commission does not require a threshold of listener complaints in order to support a claim of translator interference. It has been recommended by the National Association of Broadcasters (NAB) that a minimum of six (6) listeners should trigger a complaint. NAB feels this is a “reasonable starting point” based on their consultations with various industry stakeholders which ironically, did not include REC or any other advocate defending the interests of LPFM despite the fact that LPFM is also subject to interference from new FM translators.

³ - See Appendix B.

9. REC recognizes that not every listener will sign a declaration. This is to maintain their privacy. Signing a declaration puts the listener/whistleblower under a potential penalty of perjury (which upon itself can open itself to trouble by “bad actor” translator applicants) and their personal information appear in the public record. We have seen cases such as one taking place right now in a southwest Top-10 market where complaining listeners have received demands from the interfering translator applicant to access their property, provide information or face litigation.⁴ This and other similar bullying tactics can not be tolerated and LPFM stations do not necessarily have the resources to fight this kind of schoolyard behavior. We must also take into consideration that if the Commission implements an outer limit on complaints, this will further frustrate smaller stations like LPFM, Class D and smaller Class A stations from finding enough disinterested listeners who are willing to share their information with a worldwide audience.

10. REC has evaluated five cases where an LPFM station has filed an interference complaint against a translator either at the construction permit application (§74.1204(f)) or at construction where the Commission ruled in favor of the LPFM station.

FCC File Number	Translator applicant	Impacted LPFM licensee	Type of complaint	Number of listeners
BPFT-20161027ACT	HBI Radio Bemidji, LLC	Thomas Dale District 7 Panning Council	§74.1204(f)	3
BLFT-20161028ACL	Centro Cristiano de Vida Eterna	Bread of Life, Inc.	§74.1204(f)	7
BMPFT-20160729ANA	Salem Media of Oregon, Inc.	Portland Russian Media Center	§74.1204(f)	6
BNPFT-20171206AAF	Unity Broadcasting LLC	Hispanics United In Broadcasting	§74.1204(f)	3
BLFT-20170830ABL	Win Radio Broadcasting Corporation	Historic Takoma, Inc.	§74.1203(a)	9

11. As demonstrated, the Commission has determined predicted or actual interference by a FM translator station based on as few as 3 LPFM listeners per complaint. Especially with the Commission’s proposed redefinition of the §74.1204(f) interference area and the uncertainties regarding the size of the interference area (54 dBu or otherwise) and due to the niche nature of LPFM stations, REC must insist on a lower number of bona-fide disinterested

⁴ - See Appendix A.

listeners in order to substantiate a complaint. REC moves that where the desired station is an LPFM, FM translator, FM booster, Class D non-commercial educational station or a Class A full-service station with a service contour of less than 13.5 kilometers (equivalent of 0.3 kW at 100m HAAT), the minimum number of listener complaints required should be three (3). REC does not oppose NAB's proposed minimum of six (6) listeners in respect to full-service FM stations other than the smaller Class-A FM stations previously described.

C. Complaint Requirements and Remediation Procedures

12. The Commission is proposing to standardize the listener statement information required to be submitted by an incumbent facility to justify a listener complaint. Such a listener complaint must include the following elements:

- (1) full name and contact information;
- (2) a clear, concise, and accurate description of the location where the interference is alleged to occur;
- (3) to demonstrate that the complainant is a regular listener, a statement listens to the desired station at least twice a month; and
- (4) to demonstrate the complainant is disinterested, a statement that the complainant has no legal, financial or familial affiliation with the desired station.

13. REC does feel that the new listener complaint form elements, including the certification that the complainant is a disinterested party is adequate to demonstrate a bona-fide listener complaint. For the reasons mentioned in the next paragraph, we also ask that the geographic coordinates, rounded to the nearest second is provided to demonstrate the location of the interference. REC supports the Commission's findings that a relationship on social media on its own, does not constitute an impermissible affiliation with the desired station. What is currently not clear in the current or proposed policy is the role of unpaid volunteers. To further prevent questions on the permissibility of a listener complaint, we do feel that resolution of the status of members of the public who are not on the payroll of a non-commercial broadcast station (including LPFM) but volunteer time at the station as necessary in the *Report and Order*.

14. Privacy of the complainant listener - Especially in light of the recent cases where listeners have been threatened with litigation and an overall rise of identify theft, we must do everything we can to protect the end-user listener that is impacted by the undesired facility. It is REC's position supported by the responses of our constituents⁵ that the privacy of the complainant listener is paramount and with that, we do feel that complaining broadcast stations should be required to request confidential treatment and redaction of specific information in public filings that identifies the listener including:

- (1) Listener's name.
- (2) Listener's house number and street. (city, state and 5-digit ZIP code is not confidential)
- (3) Listener's ZIP+4 code (the other 4 digits of the ZIP code must be redacted)
- (4) Listener's contact information (phone number, email address, etc.)
- (5) Signatures replaced by /S/ on redacted documents to indicate positively that the original document was signed.
- (6) Description of the location where the interference is taking place.
- (7) The "seconds" portion of the geographic coordinates of the interference location.⁶

The redacted version should be filed in CDBS as this is a public view system and for hand-filed pleadings, through the Office of the Secretary. The redacted version is also served on the undesired facility. The confidential version of the pleading should then be sent to the Audio Division through the Audio Division Pleadings e-mail account⁷ or through a process determined by Audio Division staff.

15. With the confidentiality put in place in paragraph 13 *supra*, we do feel that the interference policy should be a hands-off approach where it comes to the end-user listener. As

⁵ - Of the REC LPFM constituents surveyed, 79% of the respondents agree or strongly agree that listeners would be more likely to file interference complaints if a level of privacy regarding their complaint can be assured by the Commission and by parties in the proceeding.

⁶ - REC does feel that it is in the public interest to know the areas where reported interference is occurring at. However, in order to strike a balance between providing this information in the public interest and assuring privacy of the complainant listener, we feel that the public document should show the approximate location of interference with a 1- minute resolution. Such resolution would still show the general location of the interference without compromising privacy. In maps provided by the complainant station, they should not be required to be redrawn at the 1-minute resolution but care should be used to not give away the listener's exact location (such as including a street-level layer on the map). Information related to the U/D relationship at the listener's location is non-identifying and should also be included in a redacted document.

⁷ - audiodivisionpleadings (at) fcc (dot) gov.

long as the undesired facility knows the approximate location of the listener (through geographic coordinates at one-minute resolution), they can develop their plan to address the interference. REC does feel that the listener's relationship is still with the desired station alone and that only the desired station and the Commission should be permitted to reach out to the end-user listener if additional information is necessary. REC does not support the sole use of contours to demonstrate an elimination of interference as contours do not properly reflect terrain. U/D ratio methodology using terrain-based prediction tools such as Longley/Rice should be employed to determine field strengths for both signals at the listener's approximate location. At that time, the desired station (who "owns" the listener) can contact the listener to verify that interference has been resolved. In no case shall the undesired station contact the listener, even after attempted resolution.

16. *Time limits on complaints.* - REC does support a time limit in resolving these cases. Some stations, especially LPFMs which have limited listeners and limited resources can't hang in the lurch too long because the undesired station is dragging the process along. We do feel that if there is an issue that can be resolved without the filing of a modification application (such as incorrect rotation on a directional antenna), the translator should be given up to 72 hours to resolve the situation or discontinue operations. Translators needing to file a modification to resolve the issue should immediately discontinue operations and file their modification. In order to prevent warehousing and other forms of gamesmanship, tolling in these situations should not be available. If the translator is not able to resolve the interference prior to three years after the construction permit was granted, then the construction permit should be cancelled by rule of law. During the time in which a complaint is still active, the undesired station should file a report once every 30 days to advise of the progress. Failure to file such a report would result in a construction permit being cancelled.

17. REC needs to point out that in the case of §74.1203(a) complaints that are based on the undesired station's actual operation, it is very important that there is some time lapse between the period of when the translator applicant files their Form 350 license to cover application and when the Form 350 is actually granted. REC has observed that depending on the day of the week, Form 350 applications can sometimes be granted the day after they were filed in

CDBS.⁸ In order to reduce burdens on staff and those who are involved with the application, it would be in the public interest to impose a minimum 7-day delay from when a Form 350 is filed to when it is actually granted. This will give a complaining station enough time to either file an interference complaint or file a request to withhold processing. If a request to withhold processing is filed, then the actual interference complaint should be filed within 14 days. If the interference complaint is not filed in 14 days or the complainant station and the applicant translator have not mutually agreed to extend time, then the license application should be granted and absolved of any interference complaints within the next 30 days. The idea is that we need to avoid *Petitions for Reconsiderations* being filed in favor of filing *Informal Objections* instead.

D. Limits on Actual Interference Complaints

18. The Commission seeks to set an “outer limit” for which a listener can be located where an interference complaint can be valid. According to the Commission, such an outer contour limit would provide greater certainty to translator operators and other broadcast services. The outer limit is intended to represent the area of where most of the station’s listeners are located. To address this, the Commission is proposing the 54 dBu contour.⁹

19. The Commission’s desire to set an outer limit was inspired by the Aztec Capital Partners case. In this case, Aztec was attempting to modify a translator to be used for cross-service. The application was objected to by Clear Communications, licensee of WVLT, Vineland, NJ who claimed they had listeners within the 60 dBu service contour of the proposed translator. The locations that were indicated by Clear fall into an area between the 44 and 48 dBu F(50, 50) service contour of WVLT. However, due to the unique terrain of the area, there are some areas, within that 44 to 48 dBu contour that, based on Longley/Rice are predicted to receive field strengths in excess of 60 dBu. Based on this, we would not be surprised if WVLT has some listeners in that area.

⁸ - Applications normally show in CDBS to the general public at approximately 12:05 AM Eastern Time and are normally viewable to Audio Division staff upon office opening.

⁹ - The NPRM does not make it clear if the 54 dBu contour referenced here is based on F(50, 50) curves as a service contour or F(50, 10) as an interfering contour. For many full-service stations, F(50, 10) curves offer a longer distance. For LPFM, the F(50, 10) curve values are mainly the same as F(50, 50).

20. LPFM stations are unique – Many LPFM stations are offering unique programming, especially to minority and other under-represented groups. Because of a lack of funding and other resources, LPFM stations are less likely to stream their audio mostly due to the costs of music licensing. This was supported by our constituent survey that has shown that only half of respondents stream their programming. In some cases, LPFM stations reach out to listeners who are more likely to be from socioeconomic backgrounds where they may not own a smartphone nor have any form of broadband internet access in their home. It is likely that at home, their only links to the outside world is a television connected to an outdoor antenna or “rabbit ears” as well as an AM/FM radio. Listeners to LPFM stations are not necessarily concentrated in a single area. Because of the unique programming that some LPFM stations offer, some listeners will try various things such as running wire antennas in order to receive the station. In other words, LPFM stations are more than likely to have listeners outside their service contours. Our constituent survey showed that for LPFM stations that are not streaming, the average distance to the farthest cluster of listeners is approximately 7 miles with some LPFM stations reporting listeners as far as 10 miles out over the air.

21. Based on flat earth, an LPFM station’s 60 dBu contour assuming the station is operating at maximum facilities is 3.5 miles (5.6 kilometers). Going to 54 dBu would extend to 5 miles (8 kilometers). In comparison, a Class A station operating at full facilities normally has a 17.6 mile (28.3 km) service contour. The 54 dBu contour would be 24 miles (38.7 km) from the station. This means that while a Class A station is allowed to be protected into the next city over, LPFM would only be protected an additional three city blocks. LPFM stations already have to work much harder to gain listeners, especially with the noise floor and other factors. It is REC’s position that for not just LPFM, but for all services 54 dBu is inadequate, especially for Class B stations which are not being considered for anything further than their actual service contours.

22. Unlike other full-service stations, LPFM stations can overlap into the interfering contours of full-service stations thus already making them prone to interference that is not actionable. For some LPFMs, the introduction of a translator could be the final nail in the coffin for these distinct local services, especially in areas where listeners have relying on that LPFM station for years. If the Commission imposes a 54 dBu or any outer limit on LPFM complaints,

we are now not just hitting an LPFM with a new §73.807 short-spacing, but now with no recourse to claim interference.

23. The unique relationship between LPFM stations and translators also comes into play here. Section 5(3) of the LCRA states that LPFM and FM translators are equal in status. Previous letter decisions have stated that a new FM translator can not foreclose on an existing LPFM station. In accordance with §73.807(c)(1) of the Rules, an LPFM station with a service contour of 13.3 kilometers or greater must be separated by at least 39 kilometers. That FM translator could be spaced from the LPFM station in some cases at short distances such as 11 kilometers.¹⁰

24. *“Any” LPFM short-spaced translator interference should be “actionable”* - While overall, REC supports various methods for reinterpreting the LCRA in order to give LPFM stations more flexibility such as changing to contour overlap for protections of translators and TV Channel 6, especially in the event of displacement, the only possible solution at this time is to impose a “soft” distance separation rule for FM translators to LPFM stations. Simply put, if an FM translator does not meet the distances specified in §73.807(c)(1) of the rules in respect to an LPFM station and based on translator contour size and channel relationship, an LPFM station should be able file an interference complaint under the current rules regardless of the location of the listener, consistent with current rules.

Distance to FM translator service contour	Co-channel separation (km)	First-adjacent channel separation (km)	Second-adjacent channel separation (km)
13.3 km or greater	39	28	21
Greater than 7.3 km but less than 13.3 km	32	21	14
7.3 km or less	26	15	8

¹⁰ - Based on a FM translator operating 0.25 kW at 107 meters HAAT (13.3 km service contour) located at a bearing of 90 degrees from the LPFM station with an “off the shelf” Katherin-Scala CL-FM antenna at horizontal polarization with a rotation of 90 degrees. Some directional patterns may be able to come in closer.

25. We note that REC has filed a *Petition for Rulemaking* with the Commission¹¹ to address some of the issues regarding LPFM placement in proximity of FM translators and offers a method where LPFM stations can use the same contour method to protect FM translators as FM translators can use to protect LPFM. Under this proposal, LPFM stations utilizing this alternative method of protection would be subject to the same interference mitigation rules as FM translators. Even if that *Petition* was adopted, we must continue to protect LPFM stations that have been §73.807(c) short-spaced due to the disparity in the LPFM vs. FM translator rules. The bottom line of our position is that if the FM translator short-spaces an established LPFM station, then the translator is required to resolve interference of a regularly used signal regardless of distance, consistent with today's rule.

26. If the Commission does not wish to accept this blanket exception for LPFM stations, we need to review the results of our constituent survey. Within that survey, it was determined that for LPFM stations that did not stream and relied solely on their over-the-air signal, the average distance to the farthest listeners is 7 miles (11.3 kilometers) with some stations reporting as much as 10 miles (16.1 kilometers). If the Commission must set an outer limit on interference, we would ask for it to be at **48 dBu**. For an LPFM on flat land, especially in rural areas, this will assure that those listeners that are up to 7 miles away that depend on that LPFM station would not have their service disrupted, especially since there are no alternatives like streaming available to hear the station.

27. Use of Longley/Rice to determine signal viability - For all service classes (even if the Commission decides to continue to use an "outer limit" in respect to translator to LPFM interference), REC feels that the outer limit should be based on actual field strength and not on just a contour. Like in the Aztec case, there is considerable terrain well outside the 54 dBu service contour that could receive field strengths as much as 60 dB. REC proposes that in addition to the use of contours, complainant stations should be allowed to use Longley/Rice field strengths to demonstrate listeners in areas who can receive the signal clearly and therefore established despite being outside of the 54 dBu (or 48 dBu that we are recommending) contour.

¹¹ - RM-11810.

E. Non-substantive Updates

28. The Commission is proposing to change the language related to secondary services in §73.1203(a)(3) and §74.1204(f). The current language, which was codified in 1990 was from prior to the creation of the LPFM service. This has led in the past to reports received by REC of LPFM stations being told by Commission staff that LPFMs are not protected as they are secondary and they have to just “live with” any interference they get from translators as well as argument made by opposing counsel on interference cases that these rules specifically do not cover LPFM. The Audio Division did make it clear in the *Bread of Life* decision that LPFM stations are considered an “authorized broadcast station” and therefore are protected under these rules and that the LCRA forbids a new FM translator from foreclosing on an existing LPFM station.

29. REC agrees that secondary services need to be included in a blanket language. However, since REC does propose different handling between LPFM stations and FM translators in accordance with the LCRA, the rules would need to be amended with language that specifically addresses LPFM stations.

IV. OTHER ACTIONS THE COMMISSION CAN TAKE TO PREVENT TRANSLATOR INTERFERENCE CASES IN THE FIRST PLACE**A. Enforcement of §74.1325(i)**

27. §74.1235(i) of the Commission’s Rules states in part that in instances where a directional antenna is proposed for the purpose of providing protection to another facility, a condition may be included in the construction permit requiring that before program tests are authorized, a permittee: (1) must submit the results of a complete proof-of-performance to establish the horizontal plane radiation patterns for both the horizontally and vertically polarized radiation components; and, (2) must certify that the relative field strength of neither measured horizontally nor vertically polarized radiation component shall exceed at any azimuth the value indicated on the composite radiation pattern authorized by the construction permit.

28. FM Translator construction permits utilizing directional antennas are simply not being given this condition. We have seen our share of cases where the translator is not placing

the same antenna that was originally proposed thus resulting in field values exceeding those on the construction permit. We are seeing very strange antennas being proposed. These are antennas that would probably not be possible or would require a complex arrangement of parasitics to achieve.

29. With more and more translators coming on the air trying to fit into any remaining sheath of spectrum available, we must hold the spectrum users accountable and assure through a method beyond “self-certification” that the antenna was constructed in accordance with the construction permit. In the past, we had more enforcement (and a lot less translators). We are at a point where Enforcement can’t be in as many places as they used to however, we also need to assure the integrity of what little spectrum there is left.

B. Changes to the LPFM Rules

30. REC feels that some changes can be made to Subpart G of Part 73 of the Commission’s Rules in order to bring LPFM to a more level playing field with FM translators and TV Channel 6 stations as well as give LPFM the same flexibility as FM translators for minor moves. Such proposed changes are out of scope of this proceeding but could be discussed in a *Petition for Rulemaking* filed by REC.

C. Implement a waiver process for LPFM stations that are only short-spaced to FM translators (while meeting distance separation to full-service FM facilities)

31 In 2001, when Section 632 of the *Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 2001* (“RBPA”) was enacted, the statute stated in part that the Commission “prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels)”.¹² In 2011 when the Local Community Radio Act was enacted, Section 2 amended the *DC Appropriations Act* to state that the Commission shall modify the rules authorizing the operation

¹² - Pub. L. 106-553; 114 Stat. 2762A-111. (“*DC Appropriations Act*”, also known as the *Radio Broadcast Protection Act* or “*RBPA*”)

of low-power FM radio stations to “prescribe protection for co-channels and first- and second-adjacent channels”.¹³

32. When the RBPA was enacted in 2001, the statute specified distance separation as the method of protection from LPFM stations to other facilities without any specific mention of the types of facilities being protected in that manner. When the LCRA was enacted, the RBPA was amended to the language that states that the Commission must “prescribe protections” whereas in the superseded §632 language prior to the LCRA, the Commission must “prescribe *minimum distance* separations” (*emphasis added*). In the LCRA with the removal of the “minimum distance” language in §632 of the DC Appropriations Act, Congress states in §3(b)(1) of the LCRA that the Commission “shall not amend its rules to reduce the minimum co-channel and first- and -second- adjacent channel *distance separation* requirement in effect on the date of enactment of this act between low-power FM stations *and full-service FM stations*.” (*emphasis added*). Both sections 3(a)(1) and 5(3) of the LCRA specifically distinguish full-service FM stations, FM translators, FM boosters and LPFM stations as separate entities. With that said, it is clear that Congress intended in the LCRA to only require distance separation as the protection method in respect to full-service FM stations and that in respect to other services, distance separation protection is not required as long as some form of protection is prescribed.

33. Since the enactment of the LCRA, applications have been filed by LPFM stations seeking a waiver of §73.807(c) by making a showing that despite not meeting minimum distance separation, there is a lack of contour overlap between an authorized FM translator facility and the proposed LPFM facility and in those cases, the Commission denied the applications citing the *DC Appropriations Act*, section 632(a) and further stating that “[t]his prohibition was again reaffirmed in the [LCRA]”.¹⁴ By dismissing these requests citing that the “prohibition was reaffirmed” in the LCRA is an error by the Audio Division staff. If the language of the original §632(a) language is compared to the LCRA §2 language that is further qualified by LCRA §3(b)(1), you will see a unique difference:

¹³ - Pub. L. 111-371, 124 Stat. 4072 (2011) (“LCRA”) at §2.

¹⁴ - See *Power One Ministries*, BMPL-20151223AZM, Letter Decision (MB, Jan. 7, 2016).

§632(a) Before the LCRA	§632 After the LCRA
<p>(1) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to--</p> <p>(A) prescribe minimum distance separations for third-adjacent channels (as well as for co-channels and first- and second-adjacent channels); and</p> <p>(B) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).</p> <p>(2) The Federal Communications Commission may not--</p> <p>(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A); or</p> <p>(B) extend the eligibility for application for low-power FM stations beyond the organizations and entities as proposed in MM Docket No. 99-25 (47 CFR 73.853), except as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act.</p> <p>(3) Any license that was issued by the Commission to a low-power FM station prior to the date on which the Commission modifies its rules as required by paragraph (1) and that does not comply with such modifications shall be invalid.</p>	<p>(a) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to--</p> <p>(1) prescribe protection for co-channels and first- and second-adjacent channels; and</p> <p>(2) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).</p> <p>(b) Any license that was issued by the Federal Communications Commission to a low-power FM station prior to April 2, 2001, and that does not comply with the modifications adopted by the Commission in MM Docket No. 99-25 on April 2, 2001, shall remain invalid.'</p> <p><u>Then, further qualified by LCRA §3(b)(1):</u> IN GENERAL- The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enactment of this Act between--</p> <p>(A) low-power FM stations; and</p> <p>(B) full-service FM stations.</p>

34. Therefore, as demonstrated, it is very clear that Section 632 *did change* as a result of the enactment of the LCRA and the language of the LCRA clearly states that the Commission must continue to *prescribe protection* but it *can* amend its rules to reduce minimum distance separation on radio services other than “full-service FM stations”. Based on this, the Commission is statutorily authorized to remove waive distance separation rules in §73.807(c) in respect to facilities other than full-service FM stations as long as protections are prescribed. With this, it is REC’s position that upon a showing of a lack of contour overlap, LPFM stations should not be precluded from a waiver of §73.807(c) as long as all other LPFM requirements are

met including distance separation to full-service stations, minimum service contour of 4.7 km and that the protection is based on a non-directional antenna.¹⁵

IV. CONCLUSION

35. Despite what is supposed to be a Congressional mandate that LPFM stations are “equal in status” to FM translators, LPFM continues to take a back seat to FM translators. By removing the ability for a significant number of well established listeners of unique LPFM stations that they have a loyalty to from being able to protest the loss of their station, this is adding more salt to the wound already created when a FM translator moves in and short-spaces an LPFM station restricting them from much flexibility and endangering their audience. Contours simply do not work, especially for these low power operations. Despite the lack of overlap, LPFM stations are much more likely to receive interference from a short-spaced translator with a directional antenna than a farther spaced full-service station even if the actual interfering contour of the other station does not overlap the service contour of the LPFM. The lack of enforcement is only enabling bad actors to completely disregard the rules and build whatever they want. The Audio Division is not even requiring proofs of performance as required by the rules.

36. Simply put, as long as LPFM stations continue to be short-spaced by FM translators, we must keep the status quo in the case of short-spacing. If, at a later time, there is more parity in the rules between LPFM stations and FM translators, we can revisit the interference issue (and perhaps make it mutually effective). For now, only as it relates to FM translators protecting LPFM stations, both statute and common sense requires us to keep the existing rules in place. The changes to the *DC Appropriations Act* enacted in the LCRA gives the Commission statutory authority to permit waivers of §73.807(c) in respect to short-spaced FM translators as long as all other LPFM rules are met.

¹⁵ - We are not proposing in *this* proceeding to permit LPFM stations to propose directional antennas to protect co-channel or first-adjacent channel FM translator facilities in connection with a waiver request of §73.807(c) as this would require substantial changes to the LPFM application process including a requirement for OMB approval of a new Forms 318 and 319. The ability to use directional antennas for LPFM stations where they would be treated like true LPFM facilities is addressed in RM-11810.

37. For FM translators protecting other FM translators, full-service and Class D FM stations (and LPFM stations if the Commission does not accept our request to keep translator to LPFM interference from any location if there is a §73.807 short spacing), 54 dBu is not far enough. REC would support a farther distance such as 48 dBu. In addition, the protection area should not be based solely on contours. If the complainant listener is at a location where by Longley/Rice receives a signal at the minimum field strength, that listener should be declared a valid complaint.

38. Finally, we need new rules and processes in place that protects the listener's privacy, prevents information theft, makes listeners more likely to participate in the process and protects them from aggressive translator applicants.

39. For some LPFMs, the environment is like a schoolyard. They can either fight the never-ending bullying by the FM translators with little support from the headmaster (FCC) or they can try to move to another school (channel), but because LPFM spacing rules towards translators and Channel 6 are still following the repealed Radio Broadcast Protection Act standards, the victim of the bullying (LPFM) has no place to go other than potential suicide (cancelling their license). Is that in the public interest?

Respectfully submitted,

/S/

Michelle Bradley

Founder

REC Networks

11541 Riverton Wharf Rd.

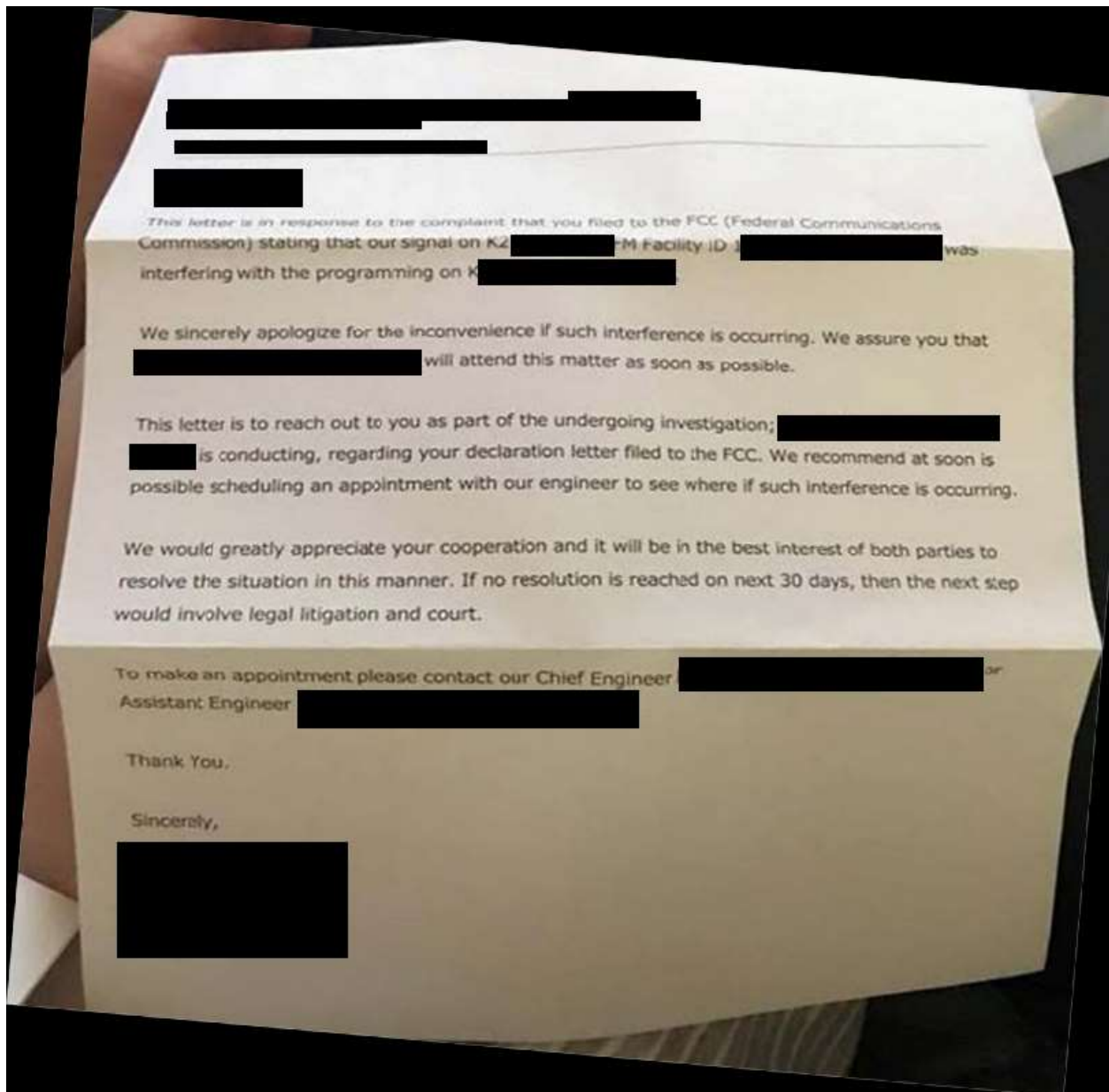
Mardela Springs, MD 21837

<https://recnet.com>

July 24, 2018

APPENDIX A

The following is a letter that was received by a listener who participated in a translator interference case involving a victim LPFM station. Because the objection is still pending, we have redacted all specifics about which case it is however, we do want to point out the threatening nature of this letter from a well-known translator licensee. Listeners should not be threatened and terrorized in this manner which is why we must keep listener complaints redacted to view by the public and by the potentially interfering translator.



APPENDIX B**CONSTITUENT SURVEY**

REC Networks conducted a response survey from June 13 through June 18, 2018. REC solicited for participation in the survey through our various groups and pages on Facebook. We have received responses from 33 participants who stated they were the authorized representative of a FCC-license Low Power FM (LPFM) broadcast station.

When asked if their station is currently streaming:

- 52% of stations are streaming.
- 48% of stations are not streaming.

Of the stations that are not streaming, the survey asked:

“Think about the locations of your listeners based on e-mails, phone calls, donations, social media, etc. What is the farthest distance between your transmitter site and a cluster of at least 10 listeners?”

Of the responses received, the average distance was 7.6 miles.

When asked about their current translator interference situation:

- 18% stated that they are currently §73.807(c) short-spaced and experiencing interference from a translator.
- 3% are short-spaced but are currently not experiencing interference.
- 42% are not short-spaced to a translator.
- 15% are not sure if they are short-spaced but they are receiving interference from a translator.
- 21% are not sure if they are short-spaced but they are not receiving interference from a translator.

Currently, one-third of the respondents to the survey are currently experiencing interference from an FM translator.

When asked “Do you agree or disagree with this statement: My listeners may be more likely to sign an interference declaration if their personal information was not published on the internet?”.

- 48% strongly agreed.
- 30% agreed
- 18% neither agreed or disagreed
- 0% disagreed
- 3% strongly disagreed

When asked “Do you agree or disagree with this statement: FM translators, upon a showing of reduced interference either inward or outward should be allowed to change to any channel to resolve the interference instead of being limited to just 1 to 3 channels up or down?”

- 36% strongly agreed
- 39% agreed
- 18% neither agreed or disagreed

- 0% disagreed
- 6% strongly disagreed

When asked “If there was another channel available at your location that would result in a reduction of interference, would you want to change your channel?”

- 42% answered “yes”.
- 24% answered “no”.
- 33% did not believe that they had any spare channels available.

When asked which segment, based on the REC Six Segments of LPFM (<https://recnet.com/6segments>), which segment would their LPFM be considered:

- 18% answered Community Media (independent media center, involved in other media source [excluding PEG] before radio)
- 0% answered Government/PEG
- 44% answered Microradio (Licensee’s corporation established for the sole purpose of running the station)
- 12% answered Cause-Based Organization (An organization that was originally formed for non-media related activities)
- 24% answered Faith-Based (all religions as well as schools at any level operated by a faith-based organizations).

When asked an open-ended question seeking additional comments, here are some of the comments posted by constituents:

“I feel proven real-world interference from translators to LPFM should not be based on complaints from listeners. I believe if it is shown from an actual study by a competent engineering firm using a real-world technique of "listening" and measurements, it should be accepted by the FCC. What’s to say a subdivision would not be built in an area of current interference? Translators and LPFM's are NOT on equal footing since LPFM's must follow a specific spacing rule, whereas translators are allowed several more options when "placing" translators.”

"If we submit listener interference reports to the FCC, will they take action since both are secondary? I know a LPFM kept a CP from being issues recently. This should be clarified by the FCC. A new translator is causing lots of interference with us now Thanks”

“Our signals are so weak we need all the help we can get to protect them. Interference is the last thing we need. Stop pitting stations' signals against each other!”

“What’s good for the translator goose should be equally good for the lpfm gander.”

“Would like to see technical rules for LPFM stations aligned with those of translators.”

“I believe on face that that rule would be equivalent to that for LPFM's; however, my local experience suggests that translators have more open channels than do LPFM's.”

“74.1203 is a great rule but has zero enforcement so it’s meaningless. Spacings have to be rigorously enforced.”

“Translators should not be allowed to be fed from HD signals as STL's and even those on the fringes of the HD signal seem to be fed Direct Via internet from the LMA'd studios operating as Full Commercial stations .This may not apply to this Question just should not be allowed Period.”

“1 km on a radius of 5 km means a lot more total impact for LPFM than 1 km additional on a C, and it is a difference of covering more of a principal community. Arguments against stations trying to operate "out of market" aren't as relevant for LPFM where a trip to the local hospital or post office takes someone across the 60 dBu contour and indoor reception is already challenging. A "one size fits all" solution would be unfortunate.

A minimum number complaints from a class C victim is out of scale with 6 for an LPFM. I believe that the requirement to respond to even a single valid complaint of interference is necessary to keep translators in check to not create an interference band out of FM.

My views are persuaded somewhat by the fact that translator owners have historically attempted to resolve interference by legal questionnaires rather than by genuine efforts to co-exist. Translators protecting with fully customized directional antennas using notches in patterns creates contours that trace along the protected contour rather than being a "one-point" tangential touch of two circles. The likelihood of interference with a longer path of interaction is going to be much higher, and the movement restrictions this places on a boxed-in station is severe. I am very concerned about being boxed in.

W[redacted]-LP has nearby translators with directional notches that effectively limit any movement in about 120 degrees. This is a major issue. My other concern is that translators have taken a role far exceeding a technical need to supplement (technically) unsatisfactory service. This need should be a major factor considered before removing any protections on stations that can only be received by a single over-the-air source.

Where a translator really allows a local station to be received in its service area, then a discussion is very much warranted. When a translator displaces or restricts any other local service, for even one person, for the purpose of duplicating coverage, then we must really fall back on the reason translators exist. Rather than translators being "all or none" in that if they create interference they must "go off the air," I think translators should be able to reduce power (no other technical changes) with notification rather than go through a minor modification procedure. Channel changes is one path to resolution, but other remedies should be made simpler, also. Re the victim changing channels: I am a believer in more options being available, but the new entrant needs to bear responsibility/costs. Ultimately, rules need to be better re buffering and predicted interference. It is too expensive and too late to be addressing actual interference. Re streaming... I assume this is information gathering and not for the purpose of interference resolution. We stream for listener convenience, but the cost model of this medium means it is not a focus or "growth" avenue.”